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of Swarthmore College, delivered a strong address on "The Federation of the World." The following resolution presented by him was unanimously and enthusiastically adopted by the more than 600 Friends present, and ordered to be sent to President Taft:

"Believing that there is no more important question before the world at this time than that of the promotion of the world's peace; believing that many agencies are now at work to hasten the day when the sword shall be beaten into plowshares and men will be ready for the Parliament of Man, the Federation of the World, and believing the treaties recently signed by representatives of the United States, England, and France to be a long step in advance; therefore, be it

"Resolved, That the large body of Friends present on the occasion of the 225th anniversary of Concord Monthly Meeting of Friends heartily commends the position of President Taft, who has taken the most advanced position of any ruler of a great nation, in his efforts to secure treaties of peace on very broad lines with England, France, and other nations."

Sweet Peace is Here.

By Mary Putnam Gilmore.

Sweet Peace is here,
And some have lifted up their eyes
And met her gentle gaze.
But others, looking forward, say:
In future ages she may come;
We know not when. Far hence it is.
Still more, with downward glance, affirm;
She will not come. The hearts of men,
Their stout and warlike hearts,
Are not abode for such as she.
But they, whose eyes have seen—
They *know* that Peace is here,
And that the hearts of men
Are her abode by right Divine.
And so they calmly wait
Until the vision come to all.

CONCORD, MASS.

The General Arbitration Treaties with Great Britain and France.

REPORT OF THE SENATE COMMITTEE ON FOREIGN AFFAIRS, TOGETHER WITH THE VIEWS OF THE MINORITY AND THE PROPOSED COMMITTEE AMENDMENTS.

[In view of the extraordinary importance of the subject, we are publishing herewith the above-mentioned papers, taken from Senate Document 98, 62d Congress, that our readers may have the whole situation before them. The text of the Anglo-American Treaty was given in full in our last issue.—Ed.]

The Report, Submitted by Senator Lodge.

The Committee on Foreign Relations has reported to the Senate, with certain amendments, two treaties—one with Great Britain and one with France—for the general arbitration of differences which may arise between those countries and the United States, and have recommended that the treaties, thus amended, be ratified by the Senate. In accordance with the instructions of the

Senate the committee now submits its report explaining the provisions of the treaties and the purpose and necessity of the amendments proposed. In order to understand thoroughly the nature of these treaties, it is necessary to review briefly what has already been accomplished in the same direction and to make clear the character of the existing treaties on this subject which are to be superseded and to point out the differences between the latter and those now before the Senate.

In 1905 Mr. Hay, then Secretary of State, negotiated with Great Britain and certain other powers general arbitration treaties, which were submitted to the Senate by President Roosevelt for its advice and consent. These treaties provided for the submission to arbitration of practically all questions which did not affect the "vital interests, the independence, or the honor of the two contracting states and which did not concern the interests of third parties." Under these treaties the special agreement, which must be entered into in each particular case for the purpose of defining the questions and the powers of the arbitrators in that case, was to be made by the Executive without reference to the Senate. By a vote of more than 5 to 1 the Senate amended these treaties so as to secure the submission of all such special agreements to the Senate for its advice and consent. The treaties thus amended were not presented by the administration to the other contracting powers and never became operative. In 1908 Mr. Root, then Secretary of State, negotiated similar treaties with various powers in which the right of the Senate to advise and consent to all special agreements made under these treaties was explicitly provided for. Approved by President Roosevelt and by him submitted to the Senate, these treaties were ratified by the Senate without opposition and are still the law of the land. The two treaties now submitted remove the exceptions made in their predecessors as to questions affecting national honor, vital interests, independence, or the interests of third parties, and substitute therefor in Article I a statement of the scope of arbitration which is designed by its terms to exclude all questions not properly arbitrable.

Article I is as follows:

"All differences hereafter arising between the High Contracting Parties, which it has not been possible to adjust by diplomacy, relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the Convention of October 18, 1907, or to some other arbitral tribunal as may be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal if necessary, define the scope of the powers of the arbitrators, the question or questions at issue, and settle the terms of reference and the procedure thereunder.

"The provisions of Articles 37 to 90, inclusive, of the Convention for the Pacific Settlement of International Disputes concluded at the Second Peace Conference at The Hague on the 18th October, 1907, so far as applicable, and unless they are inconsistent with or modified by the provisions of the special agreement to be con-

cluded in each case, and excepting Articles 53 and 54 of such Convention, shall govern the arbitration proceedings to be taken under this Treaty.

"The special agreement in each case shall be made on the part of the United States by the President of the United States, by and with the advice and consent of the Senate thereof, His Majesty's Government reserving the right before concluding a special agreement in any matter affecting the interests of a self-governing dominion of the British Empire to obtain the concurrence therein of the government of that dominion.

"Such agreements shall be binding when confirmed by the two governments by an exchange of notes."

It will be observed that by the terms of this article every difference arising between the two nations is to be submitted to arbitration if such differences "are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity," and it follows necessarily that all differences which are not justiciable in their nature by reason of not being susceptible of decision by the application of the principles of law or equity are excluded from arbitration under the terms of this article. It will also be observed that all special agreements made under this article must be submitted to the Senate for its advice and consent. To this article the committee recommends a slight verbal amendment which only serves to make clearer the meaning of the article and which need not detain us here.

If, following the example of the treaties of 1908, these treaties stopped at this point with the article defining the scope of the subjects to be submitted to arbitration, the committee would have found no difficulty in recommending to the Senate its immediate ratification. The definition of the questions to be submitted to arbitration in these new treaties is, it is true, very large and general and somewhat indeterminate. It is stated that these questions are to be justiciable by reason of being susceptible of decision by the application of the principles of law or equity. In England and the United States, and wherever the principles of the common law obtain, the words "law or equity" have an exact and technical significance, but that legal system exists nowhere else and does not exist in France, with which country one of these treaties is made. We are obliged, therefore, to construe the word "equity" in its broad and universal acceptance as that which is "equally right or just to all concerned; as the application of the dictates of good conscience to the settlement of controversies." It will be seen, therefore, that there is little or no limit to the questions which might be brought within this article, provided the two contracting parties consider them justiciable.

Under Article I, however, taken by itself, no question could be dealt with unless the treaty-making powers of both countries were agreed that it was justiciable within the meaning of the article. The most vital point, therefore, to be decided would be whether the question was justiciable according to the principles of law and equity. Every one agrees that there are certain questions which no nation, if it expects to retain its existence as a nation, will ever submit to the decision of any one else, and by reserving the power to pass upon all special agreements each party to the contract reserves at the same time the power to reject as not justiciable any of

these questions which it is admitted no nation could submit to an outside judgment without abandoning its sovereignty and independence.

These treaties, however, do not stop with the article which defines and enlarges the scope of arbitration. In Articles II and III provision is made for the establishment, if either party desires it, of a joint commission of inquiry. Such a commission is to be preliminary to arbitration and is to examine into and report upon the subject of the controversy between the two contracting parties. These articles follow in the main the provisions of the Hague convention of 1907 now in force for the establishment of such commissions. The committee ventures to think that some of the changes here made from the Hague provisions are not in the direction of an advance, but of a retreat, because they revive the idea of confining membership in the commission, if insisted upon by either party, to nationals instead of to wholly disinterested outsiders, which is the conception of the Hague convention. But the important part of these two articles is contained in the last clause of Article III, a point at which these two treaties depart widely from the Hague provisions. The clause in question is as follows:

"It is further agreed, however, that in cases in which the parties disagree as to whether or not a difference is subject to arbitration under Article I of this treaty, that question shall be submitted to the Joint High Commission of Inquiry; and if all or all but one of the members of the Commission agree and report that such difference is within the scope of Article I, it shall be referred to arbitration in accordance with the provisions of this treaty."

It will be seen by examination of the clause just quoted that if the joint commission, which may consist of one or more persons, which may be composed wholly of foreigners or wholly of nationals, decides that the question before them is justiciable under Article I it must then go to arbitration whether the treaty-making power of either country believes it to be justiciable or not. A special agreement, coming to the Senate after the joint commission had decided the question involved to be justiciable, could not be amended or rejected by the Senate on the ground that in their opinion the question was not justiciable and did not come within the scope of Article I. By this clause the constitutional powers of the Senate are taken away *pro tanto* and are transferred to a commission, upon the composition of which the Senate has no control whatever. It is said that the powers of the President under the Constitution are given up by the third clause of Article III just as much as those of the Senate. If this be true it only makes the case more serious, but the President, under the provisions of Articles II and III, although he would be bound by the decision of the commission, can nevertheless control the formation of that body. To arrange the membership of the joint commission, however, so as to defeat an adverse decision in advance would not be consonant with the spirit of the treaty, but none the less that power of indirect control remains in the hands of the President and in his hands alone.

In approving Article I of the treaty the committee assents to the arbitration of all questions coming within the rule there prescribed. The terms in which the rule is stated are, however, quite vague and indefinite, and

they are altogether new in international proceedings. It is possible that others may take an entirely different view from that entertained by the committee or by the negotiators of the treaty as to what was meant by justiciable or as to what was meant by the principles of law or equity when applied to international affairs, and in the absence of any established rules of international law for the construction of such provisions and of any precedents others might put upon these provisions a construction entirely different from that which the treaty-making power now intends. Under these circumstances to vest in an outside commission the power to say finally what the treaty means by its very general and indefinite language is to vest in that commission the power to make for us an entirely different treaty from that which we supposed ourselves to be making.

The last clause of Article III, therefore, the Committee on Foreign Relations advises the Senate to strike from the treaty and recommends an amendment to that effect. This recommendation is made because there can be no question that through the machinery of the joint commission, as provided in Articles II and III and with the last clause of Article III included, the Senate is deprived of its constitutional power to pass upon all questions involved in any treaty submitted to it in accordance with the Constitution. The committee believes that it would be a violation of the Constitution of the United States to confer upon an outside commission powers which, under the Constitution, devolve upon the Senate. It seems to the committee that the Senate has no more right to delegate its share of the treaty-making power than Congress has to delegate the legislative power. The Constitution provides that before a treaty can be ratified and become the supreme law of the land it shall receive the consent of two-thirds of the Senators present. This necessarily means that each and every part of the treaty must receive the consent of two-thirds of the Senate. It cannot possibly mean that only a part of the provisions shall receive the consent of the Senate. To take away from the Senate the determination of the most important question in a proposed treaty of arbitration is necessarily in violation of the treaty provisions of the Constitution. The most vital question in every proposed arbitration is whether the difference is arbitrable. For instance, if another nation should do something to which we object under the Monroe doctrine and the validity of our objection should be challenged and an arbitration should be demanded by that other nation, the vital point would be whether our right to insist upon the Monroe doctrine was subject to arbitration, and if the third clause of Article III remains in the treaty the Senate could be debarred from passing upon that question.

One of the first of sovereign rights is the power to determine who shall come into the country and under what conditions. No nation, which is not either tributary or subject, would permit any other nation to compel it to receive the citizens or subjects of that other nation. If our right to exclude certain classes of immigrants were challenged, the question could be forced before a joint commission, and if that commission decided that the question was arbitrable the Senate would have no power to reject the special agreement for the arbitration of that subject on the ground that it was not a question for arbitration within the contemplation of Article I. In the same way our territorial integrity, the

rights of each State, and of the United States to their territory might be forced before a joint commission, and under Article III, in certain contingencies, we should have no power to prevent our title to the land we inhabit from being tried before a court of arbitration. Today no nation on earth would think of raising these questions with the United States, and the same is true of other questions which will readily occur to everybody. But if we accept this treaty with the third clause of Article III included we invite other nations to raise these very questions and to endeavor to force them before an arbitral tribunal. Such an invitation would be a breeder of war and not of peace, and would rouse a series of disputes, now happily and entirely at rest, into malign and dangerous activity. To issue such an invitation is not, in the opinion of the committee, the way to promote that universal peace which we all most earnestly desire.

To take from the Senate, in any degree or by any means, the power of saying whether a given question is one for arbitration or not is to destroy the power of the Senate on the most important point to be decided in connection with differences arising with any other nation. Even if it were constitutional, to deprive the Senate to this extent of their share in the treaty-making power would be most unwise and most perilous. The Senate of the United States is as earnestly and heartily in favor of peace and of the promotion of universal peace by arbitration as any body of men, official or unofficial, anywhere in the world, or as any one concerned in the negotiation of arbitration treaties. The history of the United States for a period of more than 70 years exhibits a record of arbitration treaties unequaled by that of any other nation on earth. Every one of those treaties has received the cordial assent of the Senate of the United States. The Senate today is heartily in favor, in the opinion of the committee, of enlarging to the utmost practicable limit the scope of general arbitration treaties. The committee recommends to the Senate the approval of the enlarged scope for arbitration proposed in Article I, but it declines to admit that the destruction of the constitutional powers of the Senate is necessary to the promotion of peace and arbitration, or that their maintenance diminishes by a hair's breadth the enlarged scope which these treaties propose for arbitration as the true method for the settlement of international controversies.

We have discussed the abandonment of the power of the Senate to take part in the construction and application of the treaty in particular cases as they arise with no selfish concern for the prerogatives or rights of the Senate itself, but rather with solicitude that the Senate shall perform the duty which has been imposed upon it by the Constitution and shall not, by its own act, deprive itself of the power to perform that duty. The inclusion of the Senate as a part of the treaty-making power was provided upon mature consideration in the Constitution and was deemed to be adapted to our system of government. It has, on the whole, proved of the highest usefulness for the prevention of hasty and ill-considered agreements with other powers and for the preservation of the interests of all and every part of the American people. So long as that duty rests upon us we must continue to perform it with courage and firmness and without evasion or abdication.

The committee itself, and in the opinion of the com-

mittee the Senate also, has no desire to contract the ample boundaries set to arbitration in the first article. But it must be remembered that if we enter into these treaties with Great Britain and France we must make like treaties in precisely the same terms with any other friendly power which calls upon us to do so. This adds to the gravity of the action now to be taken, for nothing could be so harmful to the cause of peace and arbitration or to their true interests as to make a general arbitration treaty which should not be scrupulously and exactly observed. As has been already said, there are questions which no nation will consent to submit to the decision of any one but themselves. The only way to keep such questions from being forced forward, which is in itself promotive of dissension, ill feeling, and perhaps war, is by the reservation to each of the contracting parties of the power to decide whether or not a question is properly justiciable within the letter and spirit of the treaty.

There are certain questions at the present stage of human development which, if thus forced forward for arbitration, would be rejected by the country affected without regard to whether, in so doing, they broke the general arbitration treaty or not. In the opinion of the committee it should not be possible, under the terms of any treaty, for such a deplorable situation to arise. Nothing ought to be promised that we are not absolutely certain that we can carry out to the letter. If the third clause of Article III remains in the treaty it is quite possible that the unhappy situation just described might arise and the treaty would then become, not what we fondly hope it will be, a noble instrument of peace, but an ill-omened breeder of bitterness and war. For that reason, as well as on constitutional grounds and in the best interests of peace and arbitration itself, the committee recommends that this clause be stricken from the treaty.

VIEWS OF THE MINORITY.

PRESENTED BY SENATOR ROOT, FOR HIMSELF AND SENATORS CULLOM AND BURTON

We do not consider that the pending arbitration treaties involve any abandonment of the constitutional powers of the Senate. The contrary view cannot be maintained except on the theory that all general treaties of arbitration involve such an abandonment, and no one thinks that is so. The difference between a special treaty of arbitration and a general treaty of arbitration is that, in a special treaty the President and Senate agree that a particular case shall be submitted to arbitration, while in a general treaty the President and Senate agree that all cases falling within certain described classes shall be submitted. That is what is done by the now existing general treaties of arbitration with England and with France; and that is what is done by the first article of the pending treaties, with a materially enlarged description of the class of cases to be submitted.

The pending treaties also provide that, if the parties disagree as to whether any particular case comes within the description of the class which we have agreed to arbitrate, the question whether that case is one of the cases described shall be submitted to the arbitral decision of a joint commission.

We see no obstacle to the submission of such a ques-

tion to decision, just as any other question of fact, or mixed fact and law, may be submitted to decision. Such a submission is not delegating to a commission power to say what shall be arbitrated; it is merely empowering the commission to find whether the particular case is one that the President and Senate have said shall be arbitrated.

Provisions of this kind are very common in our statutes. For example, when Congress provides that a duty shall be imposed upon imports of one kind and not upon imports of another kind some officer has to decide whether goods which are imported come within the dutiable class or not. No one claims that the power to make such a decision involves a delegation to collectors of customs of legislative power to say what goods shall be dutiable.

It is true that there are some questions of national policy and conduct which no nation can submit to the decision of any one else, just as there are some questions of personal conduct which every man must decide for himself. The undoubted purpose of the first article of these treaties is to exclude such questions from arbitration as non-justiciable.

If there is danger of misunderstanding as to whether such questions are indeed effectively excluded by the terms of the first article, such a danger, of course, should be prevented. No one questions the importance of having the line of demarcation between what is and what is not to be arbitrated clearly understood and free from misunderstanding; for nothing could be worse than to make a treaty for arbitration and then to have either party charged by the other party with violating it.

The real objection to the clause which commits to the proposed joint commission questions whether particular controversies are arbitrable is not that the commission will determine whether the particular case comes within a known line, but that the commission, under the general language of the first article, may draw the line to suit themselves instead of observing a line drawn by the treaty-making power. If we thought this could not be avoided without amending the treaty, we would vote for the amendment to strike out the last clause of Article III, for it is clearly the duty of the treaty-making power, including the Senate as well as the President, to draw that line, and that duty cannot be delegated to a commission.

We do not think, however, that any such result is necessary. It certainly is not intended by the treaty; and it seems that it can be effectively prevented without amending the treaty by following a practice for which there is abundant precedent, and making the construction of the treaty certain by a clause in the resolution of consent to ratification. Such a clause being included in the formal ratification will advise the other party of our construction, and being accepted will remain of record as the true construction.

Such a clause may well be, in substance, as follows:

The Senate advises and consents to the ratification of the said treaty with the understanding, to be made a part of such ratification, that the treaty does not authorize the submission to arbitration of any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, or other purely governmental policy.

SUPPLEMENTAL VIEWS OF SENATOR BURTON.

I join in the above minority report, but I do not altogether agree with my two colleagues in their views relating to a modification of the treaty by amendment or by a resolution interpreting its scope or terms. The treaty, as it now is, seems to me to sufficiently safeguard national interests and the rights and prerogatives of the Senate. Hence I submit the following additional minority report:

The only important difference between the recommendations of the majority and the minority members of the Committee on Foreign Relations is on the question of whether the proposed arbitration treaties between the United States and Great Britain, and the United States and France should be approved without amendment, or approved subject to an amendment striking out the last clause of Article III. A report has already been made by the committee to the Senate, recommending the approval of these treaties subject to the amendment above mentioned, which report sets forth the views of the majority members of the committee as to the purpose and necessity of the amendment proposed. It only remains for any member of the committee to explain the grounds upon which he disagrees with the majority as to the necessity for such an amendment.

The clause which it is proposed to strike out of the treaties is as follows:

"It is further agreed, however, that in cases in which the parties disagree as to whether or not a difference is subject to arbitration under Article I of this treaty, that question shall be submitted to the Joint High Commission of Inquiry, and if all or all but one of the members of the commission agree and report that such difference is within the scope of Article I, it shall be referred to arbitration in accordance with the provisions of this treaty."

The objection of the majority of the committee to this clause is based upon the interpretation which they have adopted for it, the effect of which they hold will be to deprive the Senate of a constitutional right, and they hold further that even if under the Constitution it would be permissible to deprive the Senate of such right it would be unwise and perilous to do so. If the foregoing statement fairly represents the position of the majority of the committee the issue raised between them and the minority calls for the consideration of what is the proper interpretation to be given this clause and whether it deprives the Senate of a constitutional right, and, also, if it be found that the clause is not in violation of the Constitution, whether its adoption would be unwise and perilous.

A vital difference between the majority and the minority of the committee arises at the outset on the question of the interpretation of this clause. It is stated in the report of the majority that—

"A special agreement, coming into the Senate after the joint commission had decided the question involved to be justiciable, could not be amended or rejected by the Senate on the ground that in their opinion the question was not justiciable and did not come within the scope of Article I."

Is this interpretation justified by the terms of the treaty?

In order to answer this inquiry it is necessary to ex-

amine, briefly, the terms and effect of the clause under consideration in Article III. This clause provides that in cases in which the parties disagree (that is, the executive branches of the two governments) as to whether or not a difference is subject to arbitration under Article I of this treaty, *that question* shall be submitted to the Joint High Commission of Inquiry, and if all, or all but one of the members of the commission agree and report that such difference is within the scope of Article I, it shall be referred to arbitration (that is, the administrative branches of both governments shall take the steps prescribed) *in accordance with the provisions of this treaty*.

This language does not impair and cannot fairly be interpreted as impairing in any way, in cases arising under Article III, the freedom of action reserved to the Senate, with reference to special agreements requiring its approval and consent under Article I. Under Article III the report to the administrative branches of the two governments would simply be a declaration or decision by the commission that "the difference is subject" to arbitration under Article I, thus creating a situation exactly similar to that presented in cases where the administrative branches of the two governments were in agreement instead of disagreement as to the differences being subject to arbitration under Article I.

In the former case, under Article I the administrative branches decide at the outset that the question is justiciable and should be submitted to arbitration. In the latter case the commission decides that the question is justiciable and should be submitted to arbitration. In both cases the subsequent procedure is the same. The rights and duties of the Senate are identical whether the question is referred to that body by the administrative branch in the first instance or after the decision of the commission provided for in Article III.

It is expressly provided in this very clause of the treaty that if the commission reports that a question is "subject to arbitration under Article I" the further proceedings shall be "in accordance with the provisions of this treaty," which can mean nothing else than subject to the provisions of Article I. In other words, the requirement of this clause that the question shall be submitted to arbitration if the commission reports that it is a question coming within the scope of Article I means nothing more than that the proceedings shall take the same course as they would have taken if the executive branches of both governments had originally agreed that the question came within the meaning of that article.

It follows, therefore, that in accordance with the provisions of Article I the next step in the proceedings would be, so far as the administrative branch of this Government is concerned, to enter into a special agreement of arbitration as provided for in Article I, referring the questions in controversy to a tribunal of arbitration. The special agreement would then go to the Senate for its advice and consent. In such case, as in every other case, it would be within the power of the Senate to refuse its advice and consent to the special agreement, but it would be contrary to its treaty obligation.

It is practically impossible that the Senate would ever have occasion to refuse its approval of the arbitra-

tion of a question which the Commission of Inquiry has reported to be within the scope of Article I of the treaty. The treaty provides ample safeguards against any such possibility. In the first place, the question must be reported for arbitration by a vote of all or all but one of the members of the joint commission, one-half of the membership of which commission must be appointed by a President in whose opinion such question is not properly subject to arbitration under the treaties. Passing by the manifest unlikelihood that all three or any two of the members of the commission appointed by the United States would agree that a doubtful question is justiciable, it is within the power of the Senate to require that the President's appointment of the members of such a commission shall be submitted to it for confirmation.

In the second place it is within the power of the Senate to insist upon amendments to special agreements submitting questions to arbitration under Article I, by virtue of which power the Senate can determine the character and composition of the tribunal to which the question is to be referred. In like manner the Senate may also define the scope of the powers of the arbitrators and the question or questions at issue; it may settle the terms of reference and fix the procedure. In other words, the Senate has the power in any case to remake by amendment the terms of the special agreement and to make its approval and consent conditional upon the acceptance of such terms, although it is by no means to be expected that the Senate is at liberty to exercise any of those powers in order to defeat arbitration in a proper case.

As to the interpretation of the provisions of those treaties the language of Prof. John Bassett Moore, of Columbia University, one of the greatest living authorities on the subject of arbitration, is so pertinent that it seems appropriate to incorporate in this report the following extract from an article written by him and published in the current issue of *The Independent*:

"Let us next consider the subjects to which the pending treaties apply. While their object is, as declared in their preamble, to prevent hostilities between the contracting parties, they do not seek to accomplish that end by professing to submit all questions to the decision of an international tribunal, arbitral or otherwise. They provide for two methods of procedure, one of which is decisive and the other essentially advisory. The first is carried out by means of arbitration; the second, by means of commissions of inquiry. The differences to which arbitration is to be applied are those 'relating to international matters in which the high contracting parties are concerned by virtue of a claim of right made by one against the other, under treaty or otherwise, which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity.' It is questions such as these and not questions of policy, such as the Monroe Doctrine, national expansion, and the development of military, naval, commercial, or financial power, that the pending treaties include; and it is just such questions as the treaties include that the contracting parties, particularly the United States and Great Britain, have during the past hundred years disposed of by the score under special agreements of arbitration, but only after short controversies and numerous suggestions of order. They

now propose permanently to establish the means of disposing of them, without the preliminary quarrels and menaces, the consequence of which never could be foreseen.

"The proposed institution of commissions of inquiry, the principle of which is derived from the Hague convention, has a twofold object, (1) to obtain the preliminary investigation of questions which it is expected to submit to arbitration, and (2) to obtain an investigation of any other controversy even if it is not agreed to fall within the scope of the stipulation for arbitration. To accomplish either one of these objects the contracting parties agree to institute a 'joint high commission of inquiry,' to which each government, unless they agree to constitute the commission in another manner, is to appoint three of its own citizens. It is expressly stipulated that the report of the commission shall not be regarded as decisive of the questions submitted to it, neither as to the facts nor as to the law, and is in no way to have the character of an arbitral award. To this rule there is only one exception, and this is of a limited and qualified character. If the contracting parties differ as to whether the controversy is a proper subject for arbitration, they are to submit this question to the Joint High Commission of Inquiry; and if all the members of the commission but one report that the difference is within the scope of the arbitral stipulation, then it is to be referred to arbitration 'in accordance with the provisions of the treaty.' What, it may be asked, is the meaning of this phrase?

"This brings us to the consideration of the full and ample manner in which the pending treaties provide for the participation of the Senate of the United States in their execution. It will be recalled that in the case of the so-called Hague treaties of 1909 it was provided that in each particular case there should be concluded 'a special agreement defining clearly the matter in dispute' and 'the scope of the powers of the arbitrators.' The Senate of the United States having substituted the word 'treaty' for the word 'agreement,' so as to require in each case the advice and consent of that body, the treaties were for the time being abandoned. The pending treaties expressly stipulate that the special agreement, which must be made in every case of arbitration, shall be made on the part of the United States 'by the President * * * by and with the advice of the Senate,' the British government reciprocally reserving the right to obtain the concurrence of any of its self-governing dominions whose interests may be affected. The claims of the Senate are thus fully recognized, even where the Joint High Commission of Inquiry may have held, by the vote of all or all but one of its members, that a subject is proper for arbitration; for in no case can a question be arbitrated under the pending treaties without the concurrence of the Senate and its approval of the terms of reference."

In view of all the foregoing considerations, I am clearly of the opinion that the last clause of Article III, which the committee has recommended should be stricken out of the treaties, does not deprive the Senate of any constitutional right, and furthermore that the proposed treaties are quite the reverse of unwise and perilous, and it is believed further that the majority of the committee would concur in this conclusion if the clause were given the interpretation above set forth.

The foregoing analysis of the treaty provisions seems to establish the correctness of this interpretation beyond question, but if in the opinion of the Senate the meaning of the clause is in any way ambiguous, or there should be any doubt as to its correct interpretation, it is within the power of the Senate to remove such doubt by incorporating in the resolution giving its approval and consent to the ratification of these treaties a declaration that such approval and consent was given on the distinct understanding that the foregoing interpretation is the correct meaning of the clause under consideration, or, if preferred, specific exception could be made of questions not regarded as justiciable in the manner above suggested by my two colleagues. At any rate, it is quite unnecessary in order to safeguard national interests or maintain the prerogatives of the Senate to strike out the clause in Article III, as recommended in the majority report. And a resolution in either of the forms suggested can only be justified by the argument that in treaties between nations as well as in contracts between individuals it is desirable that every possible ambiguity of language should be removed and the meaning of the terms of the agreement made absolutely clear.

Of course it is recognized that nations so cherish certain rights and policies as to regard their maintenance as absolutely essential to their very existence. Such rights and policies cannot be made subject to arbitration without an abdication of their sovereignty. In this category may be enumerated the Monroe Doctrine and features of our domestic policy, such as the control of immigration. Questions of this nature cannot under any national interpretation be regarded as justiciable, and hence are not intended to be included in the terms of the treaties.

A further point requires consideration, and that is the statement in the majority report that "to take from the Senate, in any degree or by any means, the power of saying whether a given question is one for arbitration or not is to destroy the power of the Senate on the most important point to be decided in connection with differences arising with any other nation," and the further statement that "even if it were constitutional, to deprive the Senate to this extent of their share in the treaty-making power would be most unwise and perilous."

In respect to the question just raised, the treaties under consideration are exactly similar to the existing arbitration treaties of 1908, by the terms of which every possible difference that may arise of a legal nature or relating to the interpretation of treaties between the parties is required to be submitted to arbitration unless such difference falls within the four exceptions which reserve from arbitration questions affecting the vital interests, the independence, or the honor of the contracting parties, or which concern the interests of third parties.

The existing treaties of 1908 provide, in the very words which have been incorporated in the treaties under consideration, that the special agreements submitting questions to arbitration shall be made by and with the advice and consent of the Senate. The power of the Senate to decide whether or not certain questions should be arbitrated was clearly just as much impaired or surrendered in those treaties as is the right to pass upon an enlarged list of questions in the pending

treaties. Arbitration treaties may be special or general; if special, they include single controversies or agreements; if general, they are framed to include all controversies, or specific categories of controversies, as they may arise. The Senate has ratified treaties of both classes, and it is clear that in neither class has it abdicated its prerogatives.

The Senate, in the treaties of 1908, did not reserve the right generally to say whether or not a given question was arbitrable; it only reserved the right to say whether any specific question fell within the exceptions, and unless it should be extravagantly claimed that all differences would fall within the exceptions—in which case the existing treaties are a farce—the Senate has bound itself in advance under existing treaties to arbitrate without reservation a very large number of questions, and under these treaties it cannot in good faith refuse to ratify a special agreement submitting to arbitration a difference which does not fall within exceptions expressly reserved.

It appears, therefore, that the Senate in approving the existing arbitration treaties and the majority of the committee in approving the enlarged scope of arbitration proposed in Article I, and assenting to the arbitration of all questions within the rule therein prescribed, have shown a willingness to limit in advance the power of the Senate to object to the arbitration of a large number of questions, and it must necessarily be concluded that neither the Senate nor the majority of the committee consider that such limitation is a violation of the Constitution of the United States or that it is unwise or perilous.

SENATOR ROOT'S PROPOSED RESOLUTIONS OF RATIFICATION.

"Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the treaty between the United States and Great Britain respecting arbitration, signed at Washington on the third day of August, nineteen hundred and eleven.

"Resolved, further, That the Senate advises and consents to the ratification of the said treaty with the understanding, to be made a part of such ratification, that the treaty does not authorize the submission to arbitration of any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, or other purely governmental policy."

[The same resolution of ratification for the treaty with France.]

SENATOR BACON'S PROPOSED AMENDMENTS TO THE ROOT RESOLUTIONS.

Amend the second resolution by inserting after the word "question" in the fourth line the following words: "which affects the admission of aliens into the United States, or the admission of aliens to the educational institutions of the several States, or the territorial integrity of the several States or of the United States, or concerning the question of the alleged indebtedness or monied obligations of any State of the United States, or any question which depends upon or involves the maintenance of the traditional attitude of the United

States concerning American questions commonly described as the Monroe Doctrine."

Amend further the said resolutions by adding the following as an additional resolution:

"Resolved, further, That the Senate advises and consents to the ratification of the treaty with the understanding, to be made a part of such ratification, that the treaty does not purport or intend that there shall in any case be denied to the Senate of the United States the full exercise of all the powers and duties conferred upon it by the Constitution of the United States in advising and consenting to the making of treaties and as to each and every part of the same and as to each and every question entering therein; and that nothing in said treaty shall be construed to impose any obligation, legal or moral, upon the Senate to waive its constitutional authority and duty to consider and determine each and every question entering into treaties proposed or submitted in pursuance thereof, including the question whether the matters in difference are arbitrable."

The Chicago Office of the American Peace Society.

By Charles E. Beals, Field Secretary.

On Sunday morning, July 2, the Field Secretary preached in the Church of the Good Shepherd, Racine, Wis., Rev. J. W. Carter, Ph. D., pastor. The thermometer registered nearly 100° in the shade as the speaker discoursed on "The Christianization of Patriotism." In the evening of the same day a union patriotic meeting, arranged by Rev. Martin E. Cady, D. D., was held in the West Pullman Congregational Church. The itinerant pacifist delivered an address on "The New Fourth of July Spirit."

A week later, on Sunday morning, July 9, the Secretary preached for Rev. Jenkin Lloyd Jones, LL. D., in the Abraham Lincoln Center, Chicago, on "Some Would-be Moral Batales."

On Sunday, July 16, the Secretary preached on "Building the Kingdom," in the Second Congregational Church of Oak Park, Rev. E. D. Gaylord, pastor. Again, on September 3, the Secretary spoke in the same pulpit, asking the question, "Provincialism or Internationalism?"

The Winona Bible Assembly, of Lake Winona, Indiana, devoted one of its sessions to the subject of international peace. Indeed, this subject was given generous space on the program. Rev. C. Sylvester Horne, M. P., of London, England, brought a most thrilling international message. Rev. Dr. A. G. J. Ross, of Canada, also preached an able sermon along the same line. The authoritative word was spoken by Dr. Trueblood, the towering peace captain, who for over a score of years has filled the secretaryship of our American Peace Society. Dr. Trueblood sketched some forces which make for the inevitable breaking down of international barriers. The Field Secretary "raked after the cart" in some general remarks on the peace movement.

On the following Sunday the traveling Secretary delivered two addresses at the Ottawa, Illinois, Chautauqua Assembly. Magnificent audiences thronged the great auditorium, both in the afternoon and evening.

"Patriotism in an Internationalized World" and "What is Worth While" were the titles of the addresses given.

The comparatively quiet times of the summer and early fall have been fruitful in the preparation and maturing of new lecture material.

With his family, the Field Secretary spent the summer vacation in a quiet little nook in the White Mountains of New Hampshire, getting rested and made over for a busy winter's work.

Mr. Henry C. Morris, a member of the Chicago Peace Society, wrote an able and interesting article on "The General Arbitration Treaties," which was published in the September number of *The Hamiltonian*.

Dr. Jenkin Lloyd Jones addressed the Conference of Chinese Students at Madison, Wisconsin, August 29, to the great delight of the young Orientals.

Prof. Charles Cheney Hyde, a member of the executive committee of the Chicago Peace Society, delivered an address before a similar Conference of Chinese Students in Ohio earlier in the summer.

30 No. LA SALLE ST., CHICAGO.

Pacific Coast Peace Work.

By Robert C. Root,

Pacific Coast Representative of the American Peace Society.

[This account came just too late for our September issue, but is so interesting that we give it place in this number.—Ed.]

The Pacific Coast "is white unto the harvest" for arbitration and peace. Never before was it so easy to do peace work as now. Large and sympathetic audiences approve of the most advanced peace sentiments. The "world do move," and the Pacific slope, in spite of the jingoes, is moving toward the saner things that make for peace. Unfortunately, of course, many are still blinded by the fallacies and bound by the mediæval superstitions linked with the fateful letters that spell W-A-R; but the dawn of a better day is already in evidence, and Mars is tottering blindly toward his own tomb.

Since his last report the Pacific Coast representative has presented the cause of peace and the great arbitration treaties now pending before the United States Senate to Pasadena quarterly meeting of Friends, held in Long Beach, Cal., the last week in July. The treaties were unanimously approved in resolutions forwarded to our California Senators, and fifteen members joined the Peace Society.

August 2, the secretary addressed the Southern California Convention of Disciples, or Christian Churches, at Long Beach, in behalf of the Anglo-American and the Franco-American arbitration treaties. A resolution in favor of these treaties was passed unanimously by the convention and forwarded to the Senators from California.

Four days later the "peace man" was called to Pacific Grove, Cal., to address, on Sabbath evening, a large audience at the State W. C. T. U. Congress of Reforms. Here, again, resolutions endorsing the arbitration treaties were passed unanimously.

On August 10 the secretary, then on his way to Berkeley, Cal., stopped over one train—an hour and a half—and in that time had secured the consent of three